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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM DUNNE and THOMAS
FARRUGIA,

 Petitioners,

v.

C.L. SWAIN, Warden,

 Respondent.

Case No. CV 18-9728 MWF (SS)

**ORDER TO SHOW CAUSE WHY THE
MAGISTRATE JUDGE SHOULD NOT
RECOMMEND THAT THIS ACTION BE
DISMISSED FOR:**

**(1) PETITIONER DUNNE’S FAILURE
TO PAY THE INITIAL PARTIAL
FILING FEE; AND**

**(2) PETITIONER FARRUGIA’S
FAILURE TO FILE AN IFP
APPLICATION**

I.

INTRODUCTION

On December 17, 2018, Petitioners William Dunne and Thomas Farrugia, federal prisoners proceeding pro se, filed a document captioned “Petition for Relief in the Nature of Mandamus” under 28 U.S.C. § 1361. (“Petition,” Dkt. No. 2). Petitioners contend that the Federal Correctional Institution-1 at Victorville, California does not have a “functioning administrative remedy” process and seek, among other relief, an Order requiring Warden C.L. Swain to

1 implement specific changes to the processing of prisoner
2 grievances.

3
4 On the same day that the Petition was accepted for filing,
5 Dunne, but not Farrugia, filed a Request for Waiver of Filing Fee
6 ("Waiver Request I," Dkt. No. 3), including the Declaration of
7 William Dunne in support of the Request. ("Dunne Decl. I," Dkt.
8 No. 4). The Court construed Waiver Request I as an application to
9 proceed in forma pauperis ("IFP"), and on **January 29, 2019**, granted
10 Dunne IFP status, with an order to pay an initial partial filing
11 fee of \$70.80 within thirty days of the Court's Order. ("IFP
12 Order," Dkt. No. 10). On February 14, 2019, the Court received
13 payment of \$5.00 from Dunne, the amount of the filing fee for
14 habeas actions.

15
16 Shortly after the IFP Order issued, Dunne re-filed his Waiver
17 Request ("Waiver Request II"), including the Declaration of William
18 Dunne ("Dunne Decl. II"). (Dkt. No. 13). Waiver Request II and
19 Dunne Declaration II were nothing more than photocopies of Waiver
20 Request I and Dunne Declaration I, with one handwritten
21 interlineation added to Dunne Declaration II.¹ (Id.; compare Dkt.
22 Nos. 3-4). On **June 4, 2019**, the Court denied Waiver Request II on
23 the ground that, contrary to Dunne's contentions, this action is

24 ¹ Whereas Dunne Declaration I stated that Dunne's prison trust
25 account balance as of December 3, 2018 was \$198.77, the handwritten
26 interlineation in Dunne Declaration II states that Dunne's account
27 balance as of December 3, 2018 (the same date in the earlier
28 Declaration) was \$181.40. (Compare Dkt. No. 4 ¶ 17 with Dkt. No.
13 ¶ 17). This amendment appears to be a correction of a prior
mathematical error, not a reflection of a change in Dunne's account
balance, as the date of the balance computation remained the same.

1 subject to the filing fee requirements of the Prison Litigation
2 Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996)
3 ("PLRA"), codified at 28 U.S.C. § 1915. ("PLRA Order," Dkt. No.
4 23, at 7-8).

5
6 Accordingly, the Court denied Waiver Request II with prejudice
7 to the extent that the Request could be "construed to seek a finding
8 that the filing fee provisions of the PLRA do not apply to the
9 instant action in mandamus." (Id. at 7). However, to the extent
10 that Waiver Request II could be construed as a challenge to the
11 amount of the initial partial filing fee assessed in the January
12 2019 IFP Order, the Court denied the Request without prejudice to
13 Dunne filing "an updated Request for an adjustment of the amount
14 of the initial partial filing fee based on changed circumstances,
15 supported by a copy of his trust account statement for the prior
16 six months." (Id. at 8).

17
18 As of today, Dunne has not paid the balance due on the initial
19 partial filing fee assessed by the Court over nine months ago.²
20 Nor has he requested an adjustment to the amount of the initial
21 partial filing fee to reflect his changed financial circumstances,
22 if any. Farrugia still has not filed an IFP application at all.
23 For the reasons stated below, Dunne and Farrugia are each ORDERED
24 to show cause why this action should not be dismissed for their
25 separate failures to comply with the filing fee requirements of
26 the PLRA.

27 ² The balance owing is \$65.80 (\$70.80 - \$5.00 = \$65.80).
28

1 II.

2 THE PLRA'S REQUIREMENTS APPLY TO THIS ACTION

3
4 Dunne argued in Waiver Request II that this action is akin to
5 a habeas action and is therefore exempt from the PRLA. In the PLRA
6 Order, the Court explained in some detail why the PLRA's provisions
7 apply in this case. For the sake of completeness, the Court repeats
8 that explanation here.

9
10 It is well settled that "the PLRA does not extend
11 to a prisoner's use of habeas corpus petitions."
12 Washington v. Los Angeles Cnty. Sheriff's Dep't, 833
13 F.3d 1048, 1058 (9th Cir. 2016); see also Andrews v.
14 King, 398 F.3d 1113 (9th Cir. 2005) ("The 'PLRA's revised
15 [in] forma pauperis provisions relating to prisoners do
16 not apply to habeas proceedings.'" (quoting Naddi v.
17 Hill, 106 F.3d 275, 277 (9th Cir. 1997); brackets in
18 original). However, the PLRA, including its filing fee
19 requirements, does apply "in 'a civil action' or the
20 'appeal [of] a judgment in a civil action or
21 proceeding.'" Washington, 833 F.3d at 1058 (quoting 28
22 U.S.C. § 1915(g); brackets in original). Whether a
23 particular mandamus petition is more civil or criminal
24 in nature is a case-specific inquiry.

25
26 The Ninth Circuit has observed that "mandamus, as
27 a common-law writ that functions in some respects like
28 an appeal, is not categorically either civil or

1 criminal." El-Shaddai v. Zamora, 833 F.3d 1036, 1047
2 (9th Cir. 2016) (citing Washington, 833 F.3d at 1057-
3 59). The Ninth Circuit instructs that the determination
4 of whether a given mandamus petition should be deemed
5 "civil" (and thus subject to the PLRA) or "criminal"
6 (and thus exempt from the PLRA) "depends on the nature
7 of the underlying claim." El-Shaddai, 833 F.3d at 1047;
8 see also Washington, 833 F.3d at 1057-59 (adopting
9 reasoning of Martin v. United States, 96 F.3d 853, 854-
10 55 (7th Cir. 1996), regarding civil-criminal distinction
11 to be applied to mandamus petitions). In Washington,
12 for example, the court determined that the petitioner's
13 mandamus petitions were not subject to the PLRA because
14 they "directly challenged underlying criminal
15 proceedings" and therefore "operated like habeas
16 petitions challenging a criminal conviction." Id.; see
17 also El-Shaddai, 833 F.3d at 1047 (mandamus petition was
18 "like a habeas petition and outside of the scope of the
19 PLRA" where it directly challenged petitioner's
20 "sentence and parole terms," and thus, "the duration of
21 his criminal sentence").

22
23 In contrast, where the mandamus petition arises
24 from an action that will not affect the fact or duration
25 of the petitioner's confinement, courts have found that
26 the petition must comply with the PLRA. See, e.g., In
27 re Grant, 635 F.3d 1227, 1230 (D.C. Cir. 2011) (applying
28 PLRA filing fee requirements to mandamus petition

1 challenging order transferring petitioner's underlying
2 civil complaint to another district); Misiak v. Freeh,
3 22 F. App'x 384, 386 (6th Cir. 2001) ("The PLRA applies
4 to mandamus petitions that seek relief analogous to
5 civil complaints under 42 U.S.C. § 1983."); In re Tyler,
6 110 F.3d 528, 529 (8th Cir. 1997) ("[A] mandamus petition
7 arising from an ongoing civil rights lawsuit falls
8 within the scope of the PLRA."); In re Nagy, 89 F.3d
9 115, 117 n.1 (2d Cir. 1996) ("Whether the PLRA applies
10 to a writ of mandamus directed to a judge conducting a
11 civil lawsuit would normally depend on whether the writ
12 was simply an alternative device for obtaining the
13 relief sought in civil actions that are covered by the
14 PLRA."); Tillisy v. U.S. Fed. Bureau of Prisons, 2015 WL
15 1058256, at *2 (W.D. Wash. Mar. 10, 2015) (mandamus
16 petition seeking order compelling petitioner's transfer
17 to a different prison for advanced medical care was
18 subject to PLRA requirements because it arose "in the
19 context of civil litigation"); Fjerstad v. Palmquist,
20 2008 WL 4331633, at *1 (W.D. Wash. Sept. 17, 2008)
21 (mandamus petition alleging prison's failure to comply
22 with federal regulations governing visitation privileges
23 "must comply" with the PLRA because the petition arose
24 "in the context of civil litigation").

25
26 Petitioners' complaints in this action concern the
27 conditions of their confinement, not its duration. As
28

Petitioners argued, "[a]s a result" of Swain's alleged failure to comply with grievance process regulations,

medical services are slow-walked if provided at all, meals frequently deviate downward from the prescribed national menu without appropriate substitutes, recreational and other equipment is not repaired or issued in sufficient quantity, recreation is needlessly constrained, vocational programs are un- or underprovided, paperwork is not timely processed, provision of sanitation supplies is neglected, lights are not restored, etc., etc.

(Petition at 15). Not one of the many dozens of grievances listed on Dunne's grievance log directly challenges the fact of his conviction or the duration of his confinement. (Petition, Exh. 1). Similarly, Farrugia's grievances, attached as Exhibits to the Petition, concern only the conditions of his confinement. (Id., Exhs. 11-13). The mandamus relief Petitioners are seeking here arises from "civil actions" or appeals, not from underlying criminal matters. Accordingly, the Court concludes that the PLRA applies to the instant Petition, including the requirement in 28 U.S.C. § 1915(b)(1) that inmates proceeding in forma pauperis be "required to pay the full amount of a filing fee."

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1 plaintiff granted pauper status may be allowed to pay only an
2 initial partial filing fee, he ultimately will be required to pay
3 the full filing fee through installment payments drawn from his
4 inmate trust account.").

5
6 If a prisoner does not pay the full filing upon initiating a
7 civil action, the PLRA requires a court to (1) examine the
8 prisoner's finances, (2) assess an initial partial payment as a
9 condition of filing suit, and (3) if funds are available, collect
10 the amount assessed. See Taylor v. Delatoore, 281 F.3d 844, 850
11 (9th Cir. 2002) ("Although the court can collect the initial fee
12 only 'when funds exist,' the court is to assess the initial fee
13 based on the prisoner's account deposits and balances in the six-
14 month period immediately preceding the filing of the complaint.")
15 (emphasis in original). These requirements are intended to further
16 the PLRA's purpose of reducing baseless prisoner lawsuits. As the
17 Ninth Circuit has explained,

18
19 The PLRA filing fee provisions were enacted to
20 deter the large number of frivolous inmate lawsuits that
21 were "clogging" the federal courts and "draining"
22 limited judicial resources. See [Tucker v. Branker, 142
23 F.3d 1294 1296 (1998)] (citing statement of Sen. Kyl,
24 141 Cong. Rec. S7526 (daily ed. May 25, 1995)). This
25 goal of deterring meritless prisoner filings in the
26 federal courts is within the "realm of Congress's
27 legitimate interests." [Hampton v. Hobbs, 106 F.3d 1281
28 1287 (6th Cir. 1997)]; see also [Nicholas v. Tucker, 114

1 F.3d 17, 20 (2d Cir. 1997)]. The § 1915(b) filing fee
2 requirements are rationally related to the achievement
3 of that interest. See Hampton, 106 F.3d at 1287;
4 Nicholas, 114 F.3d at 20. Congress enacted the PLRA
5 with the belief that the "lack of economic disincentives
6 to filing meritless cases" had contributed to the
7 proliferation of prisoner litigation, [Roller v. Gunn,
8 107 F.3d 227, 230 (4th Cir. 1997)], and reasoned that
9 "[t]he modest monetary outlay will force prisoners to
10 think twice about the case and not just file
11 reflexively," see [Mitchell v. Farcass, 112 F.3d 1483,
12 1488 (11th Cir. 1997)] (quoting statement of Sen. Kyl,
13 141 Cong. Rec. S7526 (daily ed. May 25, 1995)).

14
15 Taylor v. Delatoore, 281 F.3d 844, 849 (9th Cir. 2002); see also
16 Hubbard v. Haley, 262 F.3d 1194, 1196 (11th Cir. 2001) ("[T]he
17 intent of Congress in promulgating the PLRA was to curtail abusive
18 prisoner tort, civil rights, and conditions of confinement
19 litigation.").

20
21 The Ninth Circuit has further held that the PLRA's filing fee
22 requirements pass constitutional muster because they do not impose
23 an undue burden on prisoners' access to the courts, due to the
24 safeguards built into the statute:

25
26 Although the PLRA fee provisions require all
27 prisoners proceeding IFP to pay initial fees and monthly
28 fees thereafter, several provisions of the PLRA decrease

1 the burden the fee requirements place on rights of
2 indigent prisoners to meaningful access to the courts.
3 For example, as mentioned above, the initial and
4 monthly-payment calculations are based on the prisoner's
5 assets and are limited to 20 percent of that amount.
6 See 28 U.S.C. §§ 1915(b)(1)-(2). In addition, the
7 initial fee can be collected only "when funds exist" and
8 the monthly payments can be deducted only when the
9 prisoner's account balance exceeds ten dollars. Id.
10 Moreover, the safety-valve provision ensures that a
11 prisoner cannot be barred from bringing a civil action
12 or an appeal when he or she does not have enough money
13 to pay the initial fee.

14
15 Taylor, 281 F.3d at 848 (citing 28 U.S.C. § 1915(b)(4)).

16
17 Similarly, a court may not dismiss a lawsuit brought by a
18 prisoner whose funds become depleted after the initial partial
19 filing fee is assessed and who can no longer pay. Id. at 850-51
20 (citing § 1915(b)(4)). In all other circumstances, however, a
21 court may dismiss a prisoner's civil action for failure to pay the
22 initial partial filing fee. See Olivares v. Marshall, 59 F.3d 109,
23 112 (9th Cir. 1995) (upholding dismissal for failure to pay initial
24 partial filing fee where prisoner had enough money to buy "name
25 brand toiletries" and snacks); McGuire v. United States, 2019 WL
26 1585199, at *1 (C.D. Cal. Apr. 12, 2019) ("A court may dismiss a
27 prisoner's civil-rights action for failure to pay the initial
28 partial filing fee (or indeed any portion of the full fee).");

1 Wagner v. Peppler, 2008 WL 4830022, at *2 (C.D. Cal. Nov. 5, 2008)
2 ("A court may dismiss a prisoner's § 1983 claim for failure to pay
3 a partial filing fee.") (citing Olivares, 59 F.3d at 111).
4 "Dismissal is also appropriate when a prisoner fails to respond to
5 an OSC concerning his failure to pay the filing fee." Mitchell v.
6 Gutierrez, 2013 WL 2898061, at *1 (C.D. Cal. June 12, 2013); Stoll
7 v. Riverside Cnty. Sheriff Dep't, 2018 WL 4039862, at *1 (C.D. Cal.
8 July 2, 2018), report and recommendation adopted, 2018 WL 4039932
9 (C.D. Cal. Aug. 21, 2018) (dismissing action for failure to
10 prosecute after plaintiff did not respond to order to show cause
11 concerning his failure "to submit the required initial partial
12 filing fee").

13
14 **IV.**

15 **DUNNE MUST SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED FOR**
16 **HIS FAILURE TO PAY THE INITIAL PARTIAL FILING FEE**
17

18 Dunne was ordered to pay an initial partial filing fee of
19 \$70.80 on January 29, 2019, nearly nine months ago. Dunne has paid
20 only \$5.00, apparently in defiance of the Court's finding that the
21 PLRA's filing fee requirements apply here. Nor has Dunne ever
22 executed and filed an authorization permitting prison officials to
23 assess, collect and forward monthly payments to the Court in
24 accordance with 28 U.S.C. § 1915(b)(2). Accordingly, Dunne is
25 **ORDERED** to file one of the following three documents within thirty
26 days of the date of this Order:

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12

1 1. A fully executed "Prisoner Authorization"
2 authorizing monthly payments from Dunne's trust
3 account pursuant to 28 U.S.C. § 1915(b)(2),
4 accompanied by payment of the outstanding balance
5 of \$65.80 on the initial partial filing fee
6 assessed by the Court on January 29, 2019; or

7
8 2. A request for an adjustment of the initial partial
9 filing fee based on changed economic circumstances,
10 accompanied by a fully executed "Prisoner
11 Authorization" authorizing monthly payments from
12 Dunne's trust account pursuant to 28 U.S.C.
13 § 1915(b)(2) and a copy of Dunne's certified trust
14 account statement for the previous six months; or

15
16 3. A declaration explaining why Dunne or this action
17 should not be dismissed for failure to pay the
18 initial partial filing fee pursuant to the Court's
19 January 29, 2019 Order.

20
21 Should Dunne choose option three, he is advised that the Court
22 has already considered and rejected the argument that the PLRA does
23 not apply to this action and will be disinclined to revisit that
24 finding based on arguments already asserted in Waiver Request II.
25 (Dkt. No. 23). Alternatively, Dunne may file a Notice of Dismissal,
26 **a copy of which is attached for his convenience.**

27 \\

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1 Dunne is expressly advised that if he does not file one of
2 the documents listed above by the Court's deadline, the Court will
3 recommend that he or this action be dismissed pursuant to Federal
4 Rule of Civil Procedure 41(b) for failure to prosecute and obey
5 Court orders.

6
7 **V.**

8 **FARRUGIA MUST SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED**
9 **FOR HIS FAILURE TO FILE AN IFP APPLICATION**
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11 While Dunne has paid only a fraction of the initial partial
12 filing fee applying to him, Farrugia has failed to file an IFP
13 application at all, apparently in the belief that he may rely on
14 Dunne's payment of the filing fee. He may not. Even if Dunne had
15 complied with the PLRA, which he has not, Farrugia is still not
16 excused from filing an IFP application on his own behalf if he
17 wishes to proceed in forma pauperis in this action.

18
19 There is some disagreement among the Circuits concerning how
20 the PLRA affects prisoners' ability to pursue multi-plaintiff IFP
21 actions. In Hubbard v. Haley, for example, the Eleventh Circuit
22 concluded that because "the PLRA clearly and unambiguously requires
23 that 'if a prisoner brings a civil action . . . the prisoner shall
24 be required to pay the full amount of a filing fee,'" the PLRA
25 supersedes Federal Rule of Civil Procedure 20, which governs
26 permissive joinder of parties, and prohibits prisoners from joining
27 together in multi-plaintiff actions at all. Hubbard, 262 F.3d at
28 1197 (affirming lower court ruling that under the "clear language

1 of the PLRA . . . each prisoner must bring a separate suit in order
2 to satisfy the Act's requirement that each prisoner pay the full
3 filing fee").

4
5 In Boriboune v. Berge, 391 F.3d 852 (7th Cir. 2004), the
6 Seventh Circuit agreed with the Eleventh Circuit that the PLRA
7 requires each prisoner plaintiff "seeking to proceed in forma
8 pauperis to pay one fee apiece." Id. at 855. However, it
9 determined that because the PLRA did not expressly repeal or modify
10 Rule 20, "district courts must accept complaints filed by multiple
11 prisoners if the criteria of permissive joinder are satisfied."
12 Id. at 855. At the same time, to maintain "the system of financial
13 incentives created by the PLRA," id. at 854, the Bouriboune Court
14 instructs that if joinder is permitted, a district court should
15 take "a per-litigant approach to fees" and hold each prisoner
16 responsible for paying "the full fee in installments (or in
17 advance, if § 1915(g) applies), no matter how many other plaintiffs
18 join the complaint."³ Id. at 856.

19
20 Like the Seventh Circuit, the Third Circuit in Hagan v.
21 Rogers, 570 F.3d 146 (3d Cir. 2009), held that prisoners proceeding
22 IFP may litigate jointly, but each prisoner must separately pay a

23
24 ³ Section 1915(g) provides: "In no event shall a prisoner bring a
25 civil action or appeal a judgment in a civil action or proceeding
26 under this section if the prisoner has, on 3 or more prior
27 occasions, while incarcerated or detained in any facility, brought
28 an action or appeal in a court of the United States that was
dismissed on the grounds that it is frivolous, malicious, or fails
to state a claim upon which relief may be granted, unless the
prisoner is under imminent danger of serious physical injury." 28
U.S.C. § 1915(g).

1 full filing fee. Id. at 150 ("IFP prisoners are not categorically
2 barred from joining as plaintiffs under Rule 20. [However,] filing
3 fees should be assessed on any plaintiff permitted to join under
4 Rule 20 as though each prisoner was proceeding individually.").
5 The court explained that even though § 1915(b)(3) provides in
6 relevant part that "[i]n no event shall the filing fee collected
7 exceed the amount of fees permitted by statute for the commencement
8 of a civil action," "[r]eading the PLRA as requiring each joint
9 IFP litigant to pay a full individual filing fee by installment,
10 and no more, harmonizes the PLRA with Rule 20, and internally
11 harmonizes the various provisions of § 1915(b)." Id. at 155-56.
12

13 In contrast, and seemingly alone among the Circuits that have
14 considered the issue, an Administrative Order issued by the Chief
15 Judge of the Sixth Circuit in 1997, the year after the PLRA was
16 enacted, instructs that when assessing fees in multi-plaintiff
17 litigation under the PLRA, "each prisoner should be proportionally
18 liable for any fees and costs that may be assessed," which "shall
19 be equally divided among all the prisoners." In re Prison
20 Litigation Reform Act, 105 F.3d 1131, 1138 (6th Cir. 1997). Some
21 district courts in the Sixth Circuit have interpreted this
22 administrative order to hold that only a single filing fee is
23 required in a multi-prisoner IFP action. See, e.g., Fox v.
24 Koskinen, 2009 WL 2507405, at *1 (M.D. Mich. Aug. 14, 2009)
25 (apportioning responsibility for paying a single filing fee equally
26 between two plaintiffs); Spencer v. Bynum, 2013 WL 4041870, at *1
27 (E.D. Mich. Aug. 8, 2013) (noting, without deciding, that even if
28 apportionment of a single filing fee among several prisoners may

1 be appropriate, no "cases have suggested that one plaintiff in a
2 multiple prisoner case could agree to be responsible for paying
3 the entire filing fee"). Other courts in the Sixth Circuit have
4 argued, however, that the administrative order in In re Prison
5 Litigation Reform Act is not binding as it is not a panel decision
6 and failed to consider the deterrent purpose of the PLRA, the
7 impact of Rule 20 on the PLRA's implementation, or "the enormous
8 bookkeeping implications" apportionment may have for clerks'
9 offices and prison financial offices. See, e.g., Jones v.
10 Fletcher, 2005 WL 1175960, at *6 (E.D. Ky. May 5, 2005) (addressing
11 In re Prison Litigation Reform Act but concluding that because "the
12 PLRA was designed to make prisoners feel the deterrent effect of
13 the filing fee," each prisoner in a multi-plaintiff lawsuit must
14 pay the full filing fee); Lawson v. Sizemore, 2005 WL 1514310, at
15 *1 n.1 (E.D. Ky. June 24, 2005) (explaining that "the chief judge's
16 administrative order [in In re Prison Litigation Reform Act] is
17 only an indication of what the Court may have held in 1997 had the
18 pure issue come before the court" and finding that "each separate
19 plaintiff is individually responsible for a full filing fee").

20
21 The Ninth Circuit has not yet addressed whether the PLRA
22 prohibits prisoners proceeding IFP from joining claims, or, if
23 joinder is allowed, whether each prisoner must separately pay the
24 full filing fee, as the weight of authority holds. See West v.
25 Ulloa, 2018 WL 5974346, at *6 (C.D. Cal. Feb. 7, 2018). The Court
26 notes that while district courts in this Circuit appear to have
27 reached different conclusions as to whether the PLRA permits multi-
28 plaintiff prisoner lawsuits, they consistently find that each

1 prisoner must separately pay the full fee. See, e.g., Muller v.
2 Mashburn, 2019 WL 2490658, at *1 (E.D. Cal. June 14, 2019) (ordering
3 severance of action brought by two prisoners while noting that "the
4 filing fee provisions in the [PLRA] suggest[] that prisoners may
5 not bring multi-plaintiff actions"); Surrell v. Gilliard, 2019 WL
6 916766, at *1 (E.D. Cal. Feb. 25, 2019) ("[T]he interplay of the
7 filing fee provisions in the [PLRA] suggests that prisoners may
8 not bring multi-plaintiff actions, but rather must each proceed
9 separately."); but see Worm v. Berkebile, 2015 WL 4092770, at *3
10 (D. Mont. July 6, 2015) (the "statutory requirement of full payment
11 of the filing fee remains applicable when multiple prisoners seek
12 to join as co-plaintiff in a single action, such that each prisoner
13 still must pay the full filing fee"); Treglia v. Kernan, 2013 WL
14 1502157, at *1 (N.D. Cal. Apr. 11, 2013) ("In order not to undermine
15 the PLRA's deterrent purpose, courts have agreed that prisoner-
16 plaintiffs who proceed together in one action must each pay the
17 full filing fee."); Pinson v. Frisk, 2015 WL 738253, at *6 (N.D.
18 Cal. Feb. 18, 2015) ("[T]he PLRA states, 'if a prisoner brings a
19 civil action . . . the prisoner shall be required to pay the full
20 amount of a filing fee. 28 U.S.C. § 1915(b)(1). This provision
21 expressly requires each prisoner [in a multi-plaintiff lawsuit] to
22 pay the full fee.").

23
24 Absent further direction from the Ninth Circuit, the Court
25 concludes that it is premature to decide whether Dunne and Farrugia
26 may proceed jointly, and if so, whether each is individually
27 responsible for the payment of a full filing fee, as the great
28 weight of authority both within and without this Circuit holds. It

1 is clear, however, that pursuant to the PLRA, Farrugia may not
2 participate in this litigation in forma pauperis if he does not
3 file an IFP application, supported by his prison trust fund
4 statement for the prior six months.

5
6 Accordingly, Farrugia is **ORDERED** to file one of the following
7 two documents within thirty days of the date of this Order:

8
9 1. An application to proceed in forma pauperis in this
10 case, supported by a copy of Farrugia's trust
11 account statement for the previous six months and
12 an authorization for prison authorities to disburse
13 monthly payments from his trust account pursuant to
14 28 U.S.C. § 1915(b)(2); or

15
16 2. A declaration explaining why Farrugia should not be
17 dismissed for failure to file an IFP application.

18
19 Alternatively, Farrugia may file a Notice of Dismissal, a copy
20 of which is attached for his convenience. Farrugia is cautioned
21 that even if he does not currently have funds in his trust account,
22 by proceeding with this action, he will be subject to the PLRA's
23 filing fee requirements.

24
25 Farrugia is expressly advised that if he does not file one of
26 the documents listed above by the Court's deadline, the Court will
27 recommend that he or this action be dismissed pursuant to Federal
28

1 Rule of Civil Procedure 41(b) for failure to prosecute and obey
2 Court orders.

3
4 V.

5 CONCLUSION

6
7 Neither Dunne nor Farrugia is in compliance with the PLRA's
8 filing fee requirements. Petitioners are each **ORDERED** to respond
9 to this Order to Show Cause as set forth above within **thirty days**
10 of the date of this Order.

11
12 The Clerk of the Court is directed to serve a copy of this
13 Order upon Petitioners at their respective addresses of record.

14
15 IT IS SO ORDERED.

16
17 DATED: October 21, 2019

18 /S/
19 SUZANNE H. SEGAL
20 UNITED STATES MAGISTRATE JUDGE
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